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JUNIPER NETWORKS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IMPLICIT NETWORKS, INC.,

Plaintiff,

vs.

JUNIPER NETWORKS, INC.,

Defendant.

Case No. 3:10-cv-4234-SI

**JUNIPER NETWORKS, INC.'S MOTION
TO DISMISS FOR FAILURE TO STATE
A CLAIM UNDER RULE 12(B)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 14, 2011
Time: 9:30 a.m.
Courtroom: 10

Action filed: September 20, 2010

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 14, 2011, at 9:30 a.m., or as soon thereafter as
3 counsel may be heard, in Courtroom 10 of the United States District Court for the Northern
4 District of California, San Francisco Division, located at 450 Golden Gate Avenue, 19th Floor,
5 San Francisco, California, Defendant Juniper Networks, Inc. ("Juniper") will and hereby does
6 move, under Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the
7 complaint of Plaintiff Implicit Networks, Inc. ("INI") for failure to state a claim upon which relief
8 can be granted.

9 Juniper's Motion to Dismiss is based on this Notice, the Memorandum of Points and
10 Authorities, all pleadings, papers, and records on file in this action, such matters of which this
11 Court may take judicial notice (including the documents attached to the contemporaneously filed
12 Request for Judicial Notice), and such oral argument and other evidence which may be submitted
13 to the Court at any hearing on this matter.

14 Dated: November 12, 2010

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Jonathan S. Kagan
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Rebecca Clifford

17
18 /s/ David C. McPhie

David C. McPhie
Attorneys for Defendant
JUNIPER NETWORKS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Implicit Networks, Inc. (“INI”) is a frequent visitor to this Court, having filed over seven related patent infringement suits in the last two years alone. INI filed its most recent round of lawsuits (four complaints) within a 25-day period in July and August of this year.¹ Three months after this flurry of filing activity, INI took one of its recent complaints, replaced the defendant with the name Juniper Networks, Inc. (“Juniper”), and launched the instant lawsuit against Juniper.

A review of INI’s complaint against Juniper (“Complaint”) demonstrates that it is nothing more than a repackaged copy of INI’s earlier lawsuits against other defendants, and that it contains no specific allegations relating to Juniper’s products.² The Complaint is just eleven paragraphs long and INI’s core infringement allegations are contained entirely in a single paragraph (Paragraph 9). But this lone paragraph on infringement is devoid of any factual allegations regarding the allegedly infringing Juniper products. Rather, the paragraph merely provides an indeterminate list of allegedly infringing Juniper products with a cursory allegation that Juniper is liable for direct, induced, and contributory infringement. Under *prior* law, this threadbare recital might have satisfied the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. However, recent changes in the law have made clear that this type of cursory pleading does not satisfy the minimum standards required to state a claim under Rule 8.

The Supreme Court explicitly articulated a more stringent “two-pronged approach” to Rule 8 in a case decided just last year: *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). As explained in *Iqbal*, courts using the new two-pronged approach to evaluate whether a complaint satisfies Rule 8 must:

¹ See Request for Judicial Notice (“RJN”), Exs. A-D.

² See RJN Ex. B (substantially identical complaint against Cisco), Ex. D (substantially identical complaint against Citrix); *see also id.* Ex. C (substantially identical complaint against Hewlett-Packard, but adding allegations for other patents).

1. Identify whether the complaint is supported by relevant “well-pleaded fact[s]” as opposed to “mere conclusory statements” or “legal conclusions.”
2. Evaluate whether the “well-pleaded fact[s],” if taken as true, allow the court to draw a “reasonable inference” of liability by “plausibly suggest[ing]” entitlement to the requested relief.

Id. at 1949-50. The Supreme Court emphasized that this proper understanding and application of Rule 8 would ensure that courts would not “unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Id.*

INI’s Complaint plainly fails to state a claim for infringement under the new *Iqbal* standard. The allegations of the Complaint are a repeated set of “mere conclusory statements” that Juniper “has infringed and is still infringing” INI’s patent rights; INI does not plead any facts relating to the allegedly infringing products. The Complaint, therefore, cannot satisfy the first prong of the *Iqbal* test. Moreover, even if the Court were to find that INI had alleged any well-pleaded facts in its Complaint, there is nothing in these allegations that “plausibly suggests” as a factual matter that Juniper is liable for infringement. At most, INI’s Complaint avers that INI owns patents and that Juniper sells products—a set of circumstances that, even if understood as “consistent” with the “sheer possibility that [Juniper] has acted unlawfully,” falls well short of the “plausibility” standard mandated under the second prong of *Iqbal*. *Id.* at 1949.

In light of the extraordinary costs of modern patent litigation and the significant burdens that even meritless cases pose for an already overburdened judicial system, it is more important than ever that courts carefully enforce the gatekeeping function of Rule 8 as the Supreme Court has mandated. Because INI has plainly failed to satisfy the minimum requirements of Rule 8 here, the Court should dismiss INI’s Complaint for failure to state a claim upon which relief can be granted.

ARGUMENT

Although the bare-bones infringement allegations set forth in INI's Complaint are not altogether clear, they appear intended to include discrete accusations of (1) direct infringement, (2) induced infringement, and (3) contributory infringement. As shown below, each of these theories pled in INI's Complaint independently fails to satisfy the *Iqbal* standard.

1. INI's Claims for Direct Infringement

INI's allegations regarding direct infringement provide as follows:

Juniper makes, uses, and sells *many products* including its infringing Junos operating system ("Junos OS"). Juniper makes, uses, and sells products that infringe the Patents-in-Suit, such products *including without limitation*, the following Juniper Networks' products: EX Series Ethernet Switches, J Series Services Routers, JCS1200 Control System, LN1000 Mobile Secure Router, M Series Multiservice Edge Routers, MX Series 3D Universal Edge Routers, SRX Series Services Gateways, and T Series Core Routers.

Complaint ¶ 9 (emphasis added). The crux of these allegations is that Juniper "makes, uses, and sells" an unspecified number of "infringing" products. This is, of course, precisely the type of conclusory statement that is not credited with any weight under the first prong of *Iqbal*. Indeed, as the Supreme Court has observed, if courts were to credit such legal conclusions at the pleading stage, then in practically every case the plaintiff could claim to have trivially "stated a claim for relief and [was therefore] entitled to proceed perforce"—an approach that *Iqbal* squarely rejects. *Iqbal*, 129 S. Ct. at 1950.

Furthermore, even if INI's allegations were read as a factual statement that Juniper makes, uses, and sells "many products" (including, "without limitation," a number of listed examples), such a statement would not reasonably lead to a "plausible inference" that Juniper is liable for patent infringement under the second prong of *Iqbal*. That is because there is nothing about Juniper's act of selling products that would "inherently suggest" infringement, much less infringement of the particular patents cited in the Complaint. See *Robinett v. Correctional Training Facility*, 2010 U.S. Dist. LEXIS 76327, *9 (N.D. Cal. July 20, 2010) (Illston, J.)

(dismissing complaint under *Iqbal* where ladderless bunk bed cited in inmate's complaint failed to "inherently suggest danger").

By failing to allege facts carrying any indicia of infringement, INI's Complaint fails to even satisfy the basic standards set forth in form patent complaint appended to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. Form 18; *see also* *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356-57 (Fed. Cir. 2007) (referring to illustrative forms appended to the Federal Rules in connection with Rule 8 analysis).³ Form 18 includes specific exemplary language describing the nature of the invention as claimed in the asserted patent ("an invention in an *electric motor*") and then points to products that fall within the scope of the invention as so characterized ("has infringed . . . by making, selling, and using *electric motors*"). Fed. R. Civ. P. Form 18 (emphasis added). By contrast, INI's Complaint contains neither a description of the nature of the purported invention of the patents-in-suit, nor any reference as to why Juniper products might be considered to fall within the scope of those purported inventions as claimed in the patents. This is improper. As one recent Northern District of California case has explained, Rule 8 requires in a patent case that the plaintiff allege, "*at a minimum*, a brief description of *what the patent at issue does*, and an allegation that certain named and specifically *identified products or product components also do what the patent does*, thereby raising a plausible claim that the named products are infringing." *Bender v. LG Elecs. U.S.A., Inc.*, 2010 U.S. Dist. LEXIS 33075, *19 (N.D. Cal. Mar. 11, 2010) (emphasis added).

Although deficient in other respects, the complaint in the related *Implicit Networks v. F5 Networks, Inc.* case demonstrates that INI has previously acknowledged the necessity of attempting to plead a description of the alleged invention, paired with allegedly relevant aspects of the accused products. *See* RJN Ex. A ("F5 Complaint"). The F5 Complaint is over four times the length of INI's Complaint against Juniper and contains a description of the technical problem that INI allegedly faced (*id.* ¶¶ 7-10), an initial alleged solution to the problem called "vertical application" (*id.* ¶¶ 11-13), and a description of INI's allegedly improved solution to that problem

³ Note that the Federal Circuit appears to have applied a more lenient standard in *McZeal* because the plaintiff in that case (unlike INI) was a *pro se* litigant. *McZeal*, 501 F.3d at 1356.

1 (*id.* ¶¶ 14-22). The F5 Complaint includes graphics to elaborate on the operation of the alleged
 2 invention. *Id.* ¶ 23. The F5 Complaint even provides a description of allegedly relevant aspects of
 3 the accused F5 products in that case. *Id.* ¶ 26. No corresponding material is included in INI's
 4 Complaint against Juniper.

5 By failing to provide even a minimal allegation of correlation between INI's claimed
 6 inventions and any actions by Juniper, INI has done nothing to "nudge[] its claims" of patent
 7 infringement "across the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550
 8 U.S. 544, 570 (2007). Indeed, without a well-pleaded, factually based allegation of correlation,
 9 INI has at most suggested that Juniper's conduct is "merely consistent with" an allegation of
 10 infringement—a suggestion that no more passes muster under Rule 8 in a patent infringement case
 11 than would allegations of disparate-impact law enforcement procedures in connection with an
 12 unlawful discrimination claim, or allegations of parallel conduct by competitors in connection
 13 with an alleged antitrust violation. *Iqbal*, 129 S. Ct. 1937, 1949-51; *Twombly*, 550 U.S. at 565-
 14 566; *see also Robinett*, 2010 U.S. Dist. LEXIS 76327 at *8, *10-*11 ("plausible showing" must
 15 account for "more likely and non-discriminatory explanations" of facts alleged; plaintiff must
 16 "link" alleged actions with causes of action).

17 INI's direct infringement allegations are defective for a number of additional reasons. For
 18 example, they purport to provide an indefinite list of accused Juniper products ("many products
 19 . . . including without limitation . . ."), making it impossible for Juniper to be on fair notice of the
 20 scope of alleged infringement. *See Bender v. Motorola, Inc.*, 2010 U.S. Dist. LEXIS 26076, *6-*7
 21 (N.D. Cal. Feb. 26, 2010) (dismissing direct infringement claims as "too conclusory to provide fair
 22 notice" where list of accused products was "*without limitation*") (emphasis in original); *Elan*
 23 *Microelectronics Corp. v. Apple, Inc.*, 2009 U.S. Dist. LEXIS 83715, *4-*5 (N.D. Cal. Sept. 14,
 24 2009) (dismissing direct infringement claims against "touch sensitive input devices or touchpads,
 25 including but not limited to the Smart-Pad"; "this pleading plainly falls within the prohibition
 26 against threadbare recitals of the elements of a cause of action"). INI's claims of direct
 27 infringement even fail to allege the basic requirement that the Juniper's supposedly infringing
 28 conduct took place within the United States. *Bender v. Nokia Inc.*, 2009 U.S. Dist. LEXIS 92482,

*3 & n.4 (N.D. Cal. Oct. 2, 2009) (granting motion to dismiss “for failure to allege infringing activity within the United States”); *Advanced Analogic Techs., Inc. v. Kinetic Techs., Inc.*, 2009 U.S. Dist. LEXIS 57953, *4 & n.2 (N.D. Cal. July 8, 2009) (same). Accordingly, the Court should dismiss these claims as defective under Rule 8.

2. INI’s Claims for Induced Infringement

INI’s allegations regarding induced infringement provide as follows:

In addition, Juniper has infringed and is still infringing the Patents-in-Suit patents in this country, through, *inter alia*, its active inducement of others to make, use, and/or sell the systems, products and methods claimed in one or more claims of the patents.

Complaint ¶ 9. Virtually all of the deficiencies set forth above apply equally to these induced infringement claims.⁴ Indeed, if anything, these claims fall even further short of the *Iqbal* standard.

For example, when stripped of legal conclusions and conclusory statements (as required under the first prong of *Iqbal*), it is apparent that INI’s induced infringement allegation includes no actual facts regarding alleged conduct by Juniper. All that INI alleges is that Juniper “has infringed and is still infringing . . . through . . . its active inducement of others” *Id.* Thus, there is literally no factual explanation as to what Juniper is alleged to have done to induce others to commit infringing acts; INI’s claim is merely a “naked assertion[] devoid of further factual enhancement.” *Iqbal*, 129 S. Ct. at 1949 (internal quotes omitted); *see also Duhn Oil Tool, Inc. v. Cooper Cameron Corp.*, 2010 U.S. Dist. LEXIS 57461, *15 (E.D. Cal. June 9, 2010) (granting motion to dismiss; claims must “allege the specific conduct by [defendant] which invites third parties to directly infringe”).

Similarly, INI’s allegations provide no well-pleaded facts regarding any alleged direct infringement by others (which is a prerequisite to any indirect infringement claim). *Joy Techs, Inc. v. Flakt, Inc.*, 6 F.3d 770, 774 (Fed. Cir. 1993) (“Liability for either active inducement of infringement or for contributory infringement is dependent upon the existence of direct

⁴ The indirect infringement allegations do at least state that the alleged induced infringement occurred “in this country.” Complaint ¶ 9.

infringement.”). Here, the Complaint merely makes reference to unnamed “others” who perform some undetermined combination of “mak[ing], us[ing], and/or sell[ing].” Complaint ¶ 9; *see Duhn Oil*, 2010 U.S. Dist. LEXIS 57461 at *15 (granting motion to dismiss; claims “shall identify any such third party infringers . . . and how that infringement is or was accomplished”). There is no well-pleaded factual allegation as to how these third-party acts are allegedly performed or even which of the patents-in-suit they allegedly infringe (or both). *Motorola*, 2010 U.S. Dist. LEXIS 26076 at *10 (dismissing induced infringement claim based on “conclusory, fact-barren allegation” that that defendant “performed acts . . . that infringe and *induce others to infringe*”) (emphasis in original); *Realtime Data, LLC v. Morgan Stanley & Co.*, 2010 WL 2403779, *1 (E.D. Tex. June 10, 2010) (granting motion to dismiss where plaintiff failed to “identify a direct infringer and identify which methods or systems indirectly infringe the patent-in-suit”); *Bedrock Computer Techs, LLC v. SoftLayer Techs., Inc.*, 2010 U.S. Dist. LEXIS 62711, *11-*12 (E.D. Tex. Mar. 29, 2010) (same). Indeed, INI’s inducement allegations fail to mention any specific products, systems, or methods at all (let alone any Juniper products, systems, or methods). *Id.* at *8 (dismissing for failure to “actually identif[y] specific accused devices”).

A claim for induced infringement also requires an allegation of specific intent to infringe. *DSU Medical Corp. v. JMS Co., Ltd.*, 471 F. 3d 1293, 1306 (Fed. Cir. 2006) (“inducement requires that the alleged infringer . . . possessed specific intent to encourage another’s infringement”). No such allegation is included in INI’s Complaint. *Halton Co. v. Streivor, Inc.*, 2010 U.S. Dist. LEXIS 50649, *5 (N.D. Cal. May 21, 2010) (dismissing induced infringement claims where there was “no mention of any specific intent to encourage another’s infringement”).

INI’s inducement claims therefore fail to satisfy Rule 8, and likewise should be dismissed.

3. INI’s Claims for Contributory Infringement

Finally, INI’s allegations regarding contributory infringement provide as follows:

Juniper has infringed and is still infringing these patents in this country through, *inter alia*, providing and selling goods and services including products designed for use in practicing one or more claims of the patents, where the goods and services constitute a material part of the invention and are not staple articles of commerce, and which have no use other than infringing one or more claims of the patents. Juniper has committed these acts with knowledge that the goods and services it provides are specially made for use in a manner that directly infringes these patents.

Complaint ¶ 9. Once again, these allegations are nothing more than a “formulaic recitation of the elements of a cause of action” that cannot satisfy Rule 8 under Supreme Court law. *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S., at 555). Thus, INI claims that unnamed Juniper goods and services “constitute a material part of the invention” (a verbatim quote of 35 U.S.C. § 271(c)) and “not staple articles of commerce” (another verbatim quote), that they “have no use other than infringing” (the statute says no “substantial noninfringing use”), and that Juniper “know[s] that [they] are specially made for use in a manner that directly infringes” (again, a paraphrase of “knowing the same to be especially made . . . for use in an infringement” from § 271(c)). See Complaint ¶ 9. None of these legal conclusions survives application of the first prong of *Iqbal*. Nor does the statement that “Juniper has infringed and is still infringing these patents” *Id.* At most, all INI has alleged here is that Juniper is “providing and selling goods and services including products” *Id.* This amorphous allegation does nothing to remotely suggest a plausible claim of patent infringement under *Iqbal*.

Like INI’s deficient inducement claims, the contributory claims fail to articulate any well-pleaded facts regarding direct infringement by third parties. There is no mention of any particular devices, methods, or systems. Except for the fact that INI has alleged that Juniper’s acts of contributory infringement occurred “in this country,” all of the deficiencies of INI’s direct infringement claims apply equally here. Accordingly, INI’s claims for contributory infringement should also be dismissed.

